SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 445

FRED A. ENGEL, LEONA D. ENGEL, IRMA MATHIES, ROBERT QUIGLEY, ISADORE BURNSTINE, LEOKADIA S. JAMES, LOUIS MUGURDICH, M. LOUISE HARRIS, MAUDE GRANEY, MARY A. LARIVIERE, EDWARD POLHILL, PETER ROMANALLO, CLARENCE BONSWOR, FLORENCE BONSWOR, ROSE YELLEN, LOUIS GEORGE, NELLIE FEYS, FRANK ZUSSMAN, KATHERINE MULLEN, JOANNA [illegible] ROBINSON, AND ANNABELLE HATCHER,

Petitioners,

vs.

RECORDER'S COURT OF THE CITY OF DETROIT, MICHIGAN, HONORABLE W. McKAY SKILLMAN, JUDGE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, the undersigned, respectfully present to this Court, in their own proper persons, this, their peti-

tion for a writ of certiorari addressed to the Supreme Court of the State of Michigan, commanding said Court and the clerk thereof to certify to this Court the record and proceedings of the petition for writ of certiorari in said Supreme Court of Michigan, wherein your petitioners were the petitioners and the Recorder's Court of the City of Detroit, Michigan, Honorable W. McKay Skillman, Judge, was the respondent, as above entitled, for the review and determination of said cause by this Court.

The reasons relied on for the issuance of a writ of certiorari, and upon which your petitioners believe that said writ ought to be issued, may be summarized as follows:

First: A specific question was presented to the Supreme Court of Michigan in the foregoing cause, which necessarily involved, in its decision, the issue whether or not your petitioners' rights under Section 1, Fourteenth Amendment to the Constitution of the United States were violated; because the proceedings were, as shown by the petition in said cause, illegal and void. Hence, there was a taking of private property without due process of law, because without process of law at all.

Second: The Supreme Court of Michigan decided the issue by refusing to grant said petition for writ of certiorari; and necessarily therefore decided the issue of whether or not the taking of petitioners' property was without due process of law, unfavorably to your petitioners, and, as your petitioners verily believe, in error of law, there being no dispute as to facts.

Third: Your petitioners afterward requested a rehearing of the Supreme Court of Michigan, for the purpose of presenting oral argument to show that said taking of property was without due process of law. The said Court refused to grant a rehearing.

Your petitioners present herewith, hereto annexed, certified copies of the said petition for writ of certiorari,

which was filed April 4, 1950; and of the petition for rehearing, which was filed August 9, 1950.

Your petitioners also present, annexed hereto, certified copies of the order of the Supreme Court of Michigan denying the said petition, and denying the said petition for rehearing, dated April 12, 1950, and September 11, 1950. Your petitioners, within three months from the final denial by the said Court, herewith present the within petition for relief.

The respondent had heard proceedings by the City of Detroit aforesaid, to acquire by eminent domain the private real property of your petitioners, amongst others. Admittedly, under the law, the jury hearing said proceedings was sole judge of the law and facts, with power to decide the necessity of the proceedings, and to fix the compensation for said property if necessity was found.

The Constitution of the State of Michigan demands that in such proceedings the jury, because of its powers, MUST be composed entirely of freeholders *living in the vicinity of the property to be condemned.* It is a fact, not disputed, that no one of the jurors in the said proceedings lived in the vicinage.

The Charter of the said City of Detroit, under which said proceedings were held, contains a mandatory requirement that all said jurors be freeholders living in the City of Detroit. It is a fact not disputed in said proceedings that one of the said jurors did not live in the City of Detroit, and was not a freeholder in the City of Detroit.

Many of your petitioners were not represented by counsel in said proceedings, and acted in a plea to quash said proceedings as soon as the foregoing errors were discovered.

Your petitioners maintain that the said jury was perforce illegal, that the proceedings were perforce void, and that the taking of their property by eminent domain under such circumstances is without any process of law, and hence

completely violates their rights under Section 1, Fourteenth Amendment to the Constitution of the United States, in that the taking is without due process of law.

Your petitioners further maintain that the Supreme Court of Michigan, highest court of said state, has perforce decided this Constitutional question adversely to your petitioners.

The citation to the pertinent section of the Michigan Constitution, hereinbefore mentioned, is: Section 2, Article Thirteen. The citation to the Detroit City Charter is: Title 8, Chapter 1, Section 6.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued under the seal of this Court, directed to the Supreme Court of the State of Michigan, sitting at Lansing, Michigan, commanding the said Court to certify and send to this Court on day to be designated, a full and complete transcript of the record and proceedings of the said Supreme Court of the State of Michigan, had in said cause. To the end that the said cause may be reviewed and determined by this honorable Court was provided by law and that the said judgment of the Supreme Court of the State of Michigan be reversed by this honorable Court and for such further relief as may seem proper. And your petitioners will ever pray.

FRED A. ENGEL
IRMA MATHIES
ISADORE BURNSTINE
LOUIS MUGURDICH
MAUDE GRANEY
EDWARD POLHILL
CLARENCE BONSWOR
ROSE YELLEN
NELLIE FEYS
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M. LOUISE HARRIS
MARY A. LARIVIERE
PETER ROMANALLO
FLORENCE BONSWOR
LOUIS GEORGE
FRANK ZUSSMAN
JOANNA B. ROBINSON

STATE OF MICHIGAN,
County of Wayne, ss.

Personally appeared before me the foregoing named petitioners, who made oath they have read the foregoing petition by them subscribed, that they know its contents, and that same is true, except as to those matters based upon advice, information, and belief, and as to those matters, they believe it to be true.

JOHN DALZÉAL,
Notary Public,
Wayne County, Michigan.

[SEAL.]

My commission expires March 6, 1953.

SUPREME COURT OF THE UNITED STATES

Michigan Supreme Court No. 44809½

FRED A. ENGEL, ET. AL.,

Petitioners,

vs.

RECORDER'S COURT, CITY OF DETROIT, MICHIGAN

MEMORANDUM OF LAW

"This Court must determine for itself whether the suit really involves any Federal question which will entitle it to review the judgment of the State Court." (151 U.S. 527)

If it be reasonably apparent that the State Court has dodged the Federal question, the U. S. Supreme Court asserts its right and assumes jurisdiction. (Eugene F. Ware, "From State Court to U. S. Supreme Court.")

As to whether or not a Federal question is well pleaded is itself a Federal question. (185 U.S. 148.)

In the instant cause, the Federal question was raised in the original initial petition for common law writ of certiorari in the State Court. Both on hearing and on rehearing the Federal question was before the Court, a question inextricably bound up with the facts of the cause.

"If a Federal question is fairly presented by the record, and its decision is necessary to determination of the case, a judgment which rejects the Federal claim but avoids all reference to it, is as much against the right, within the meaning of Rev. Stat. Sec. 709 as if it had been specifically referred to, and the right directly refused." (123 U.S. 540) (68 U.S. 109) (124 U.S. 394)

Respectfully submitted,

LEONA D. ENGEL,
965 Brainard Street,
Detroit 1, Michigan,
Petitioner in proper person.

Dated: December 6, 1950.

JAN 8 19
CHARLES ELMORE C

United States of America

In the

Supreme Court of the United States

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No. 445

FRED A. ENGEL, et al.,
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Honorable W. McKay Skillman, Judge,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PAUL T. DWYER,
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VANCE G. INGALLS,
Assistant Corporation Counsel,
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Detroit 26, Michigan,
Counsel for Respondent.

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Honorable W. McKay Skillman, Judge of Recorder's Court of the City of Detroit, herewith opposes the issuance of a writ of certiorari in the above cause for the reason that no copy of a printed record including the proceedings in the Court to which the writ is asked to be directed, has been served by petitioner on the undersigned counsel for the respondent to date.

See Rule 38, Rules of the Supreme Court of the United States, paragraph three thereof, which reads in part as follows:

> "Notice of the filing of the petition, together with a copy of the petition, printed record and supporting brief, shall be served by the petitioner on counsel for the respondent within ten days after the filing (unless enlarged by the court, or a justice thereof when the court is not in session), and due proof of service shall be filed with the clerk."

PAUL T. DWYER,
Acting Corporation Counsel,
City of Detroit,

VANCE G. INGALLS,
Assistant Corporation Counsel,

JAMES H. LEE,
Assistant Corporation Counsel,
301 City Hall,
Detroit 26, Michigan,
Counsel for Respondent.

Dated: January 4, 1951.